29th November 1923] [Mr. R. Srinivasa Ayyangar]

who unfortunately are driven to criminal courts is arguing in a vicious circle, and I am sorry to say that the time taken by the courts in this direction is not altogether a defensible point. It is a matter of common knowledge that for nearly sixty years, ever since the Act of 1861 was placed on the Statute Book, accused persons have not been asked to pay a court-fee and legal practitioners were appearing on their behalf. Time was, years ago, when we appeared on behalf of the accused, we said simply: 'we appear for so and so, accused' and we never used to file a memorandum. Thereafter, the rule 141 of the Criminal Rules came into operation and since then we have been simply filing memoranda of appearance. There is no reason or justification, and no case has been made out for taking away the privileges which have been enjoyed hitherto without any question and without any interruption for a long number of years. And it is also a matter of common knowledge that accused persons are obliged to incur heavy charges and I believe it is within the recollection of this House that quite recently even the price of copy stamps has been raised from 2 to 3 annas. All things considered, I venture to submit, it is incumbent upon us to vote against the introduction of this Bill."

X

APPROVAL BY HIS EXCELLENCY THE GOVERNOR OF THE ELECTION OF DEPUTY PRESIDENT.

The hon. the PRESIDENT :—" Before the House rises for lunch, I have to inform hon. Members that His Excellency the Governor has been pleased to approve the election of Diwan Bahadur P. Kesava Pillai as Deputy President."

XI

ANALYSIS OF VOTING ON THE 'NO CONFIDENCE' MOTION.

Mr. C. RAMALINGA REDDI :—" Mr. President, with reference, Sir, to the debate which took place yesterday, I beg to thank you for having allowed a question of which I gave private and, I am afraid, very inadequate notice. I wish to know, Sir, if any analysis has been made of the votes that took place yesterday, especially with reference to one of the points mentioned in the terms of the address, namely, that the composition of the Ministry was against the deliberate verdict at the general election. Sir, you will be laying us all under a very great obligation indeed, if you will kindly inform this House how many of the elected Members voted for the address, how many of the elected Members voted against and how many of the elected Members remained neutral."

The hon. the PRESIDENT :—" It is a very unusual request, but I take it, it is due to the unusual circumstances. I hope it will not be made a precedent binding myself or my successors. I think hon. Members are aware that 108 Members voted, 43 *for* and 65 *against* the motion. All the 43 Members who voted for the address were elected Members (Applause). Of the 65 Members who voted against the address, 44 were elected Members."

Mr. C. RAMALINGA REDDI :—" Including the Ministers, Sir "?

The hon. the PRESIDENT :—" The Ministers are also elected Members."

Mr. A. Ramaswami Mudaliyar :—" Do the 43 who voted for the address include would-be Ministers ? "

Mr. C. Ramalinga Reddi :—" We are not in the confidence of His Excellency, Sir."

The hon. the President :—" I thought the hon Members were anxious to get me to give some information. If they want to give information to each other, they can do so immediately—during the lunch interval."

The hon. Rao Bahadur A. P. Patro :—" May I, Sir, ask with your permission, with reference to the votes of yesterday, how many of those who voted for the Motion were Swarajists, how many Nationalists and how many non-Brahmans ? "

The hon. the President :—" That I cannot give for the obvious reason that we keep no record of the parties to which Members belong. Hon. Members are aware that parties in all countries are liable to change. They are peculiarly liable to change in Madras just now. And I have no right to give that information without the permission of the hon. Members themselves. I can only say whether they are elected or not.

" I think I was saying that, of the Members who voted against the address, 44 were elected, 5 nominated officials, 13 nominated non-officials and 3 ex-officio Members. So the 65 is composed of 44 elected Members and 21 non-elected Members. In addition to this, I should say that 10 Members remained neutral of which one was a nominated official, 3 nominated non-officials and 6 elected non-officials. I presume that that information satisfies all hon. Members."

Mr. C. Ramalinga Reddi :—" I beg to thank you, Sir."

The Council then adjourned for lunch at 1-30 p.m.

A BILL FURTHER TO AMEND THE COURT FEES ACT, 1870, IN ITS APPLICATION TO THE PRESIDENCY OF MADRAS—*cont.*

The Council re-assembled at 2-30 p.m. with the Raja of Ramnad, Chairman, in the Chair, when the discussion on the Court Fees Act (Amendment) Bill was resumed.

Mr. J. A. Saldanha :—" Mr. President, Sir, I would like to propose an Amendment in the sense of the proposal that fell from the hon. the Law Member, namely, that of excluding the accused from the operation of the Bill, if I am not out of order."

The hon. Mr. C. P. Ramaswami Ayyar :—" Mr. President, this is hardly the time for the moving of Amendments."

The Raja of Ramnad (*from the Chair*) :—" The Motion simply is that the Bill to further amend the Court Fees Act be read in Council, and the House is now discussing that Motion only."

Mr. J. A. Saldanha :—" In that case, Sir, I would propose the rejection of this Bill (cheers), and avoid all trouble. It is a fundamental principle of the British constitution, and, I believe, also of the British Indian constitution that Government should not sell justice, and any revenue derived from the court fees should not be more than the cost of the expenditure on the establishment and the maintenance of the Courts of Justice. My impression, and I think it is a correct impression, is that the income of the Government from court fees more than covers the cost of expenditure on the establishment and the maintenance of the courts. If that is the case, I

29th November 1923] [Mr. J. A. Saldanha]

would emphatically protest against any increase of taxation which goes beyond the reasonable limits of the fundamental principle of any administration, that is, that court fees should not exceed the actual expenditure on courts. Here, in this Amending Bill, it is proposed to levy a taxation which would be quite iniquitous so far at least as the accused, if not other parties, are concerned. And if the revenue is really in excess of the expenditure on the maintenance of the courts, I do not see any reason why we should not go back to the old state of things which had existed before the previous Amendment of the Court Fees Act. It is admitted, Sir, that that Amendment was conceived in a spirit of vindictiveness. . . "

The hon. Mr. C. P. RAMASWAMI AYYAR :—" It was never admitted, Sir, that it was conceived in a spirit of vindictiveness. All that was admitted was that developments of vindictiveness took place."

Mr. J. A. SALDANHA :—" There was some such impression, Sir. Anyhow from what has been stated by some hon. Members, we understood that it was conceived in a spirit of vindictiveness. From all accounts, I find that it was due to some sort of pique against a certain class of legal practitioners that the Amendment had been brought about, and if that was the case, I do not see any reason why we should retain this clause. I would, therefore, propose that the Bill should be rejected."

The hon. Mr. C. P. RAMASWAMI AYYAR :—" Mr. President, Sir, with your leave, I propose to make a statement which I see will be generally acceptable to the House. The discussion that has proceeded so far has disclosed, I think, three facts ; that this Council in its very early infancy does not desire to commit itself, directly or indirectly, to what may be called a taxation enactment. That seems to be the first sentiment animating this Assembly. The second point is that so far as the accused persons in criminal cases are concerned, they ought not to be compelled to pay anything by way of court fees.

" On the first point I shall have very little to say though my hon. Colleague the Finance Member might have to enter a caveat with reference to the principle animating the House. As to the second point, I have already stated that that point entirely meets with my sympathy. I really see that there may be cases of hardship and indeed of impossibility where it may not be financially possible for the accused to purchase the court-fee stamps, or it may not be possible for him physically to do so. And, therefore, the possibility of amending this Act so as to exempt the accused is a matter which will engage the attention of the Government. Now, the position as it stands is that an advocate has to pay one rupee, two rupees or three rupees in all cases, whether he files a memorandum of appearance or not. That anomaly which is generally admitted will have to be removed and, therefore, a Bill has to be brought forward and will be brought forward for that purpose, and if, as I conceive it, it is the sentiment of the House that a Bill removing that anomaly and exempting the accused person from payment of court fees is necessary, I am perfectly prepared to bring forward a separate Bill in that behalf. I may say at once that I do not desire it to be understood as giving any undertaking that in any Bill to be brought forward, the complainants will be exempted. That is a thing on which I do not desire to be understood as

[Mr. C. P. Ramaswami Ayyar] [29th November 1923

giving any undertaking. Subject to that, and with the permission of the House, I would withdraw this motion, with permission to bring in another Amending Bill."

The motion was by leave withdrawn.

XII

THE TUTICORIN PORT TRUST BILL.

The hon. Sir CHARLES TODHUNTER:—" Mr. President, I beg leave to introduce a Bill to make provision for the regulation, conservancy and improvement of the port of Tuticorin and to move that the Bill be read in Council, and I hope nobody will think that this is a taxation measure (laughter).

" As the Council are aware, one of the most urgent essentials, if there is to be any real development of the resources of the Presidency, is the development of the means of communication. Under this head, there are three principal requirements, improvement of roads, improvement of railways and improvement of harbours. Roads are a matter for the local bodies and railways for the Government of India. The development of new harbours is generally a matter in the first instance for the Local Government.

" The position under the law is somewhat complex. There are two classes of dues levied at ports, viz., dues on the tonnage of shipping which are applied in the main to purposes connected with the safety of ships and mariners, and dues collected on goods and passengers which are applied to improving the facilities for the handling of cargo and for the convenience of passengers. Both go into special funds, the former administered by the officers of the Port Department, the latter by the harbour authorities. These authorities again fall into three categories, viz, (1) Landing and Shipping Fees Committees, (2) Port Conservancy Boards and (3) Port Trusts.

" The Madras Outports Landing and Shipping Fees Act, 1885, provides only for the levy of dues on goods imported into a port at rates fixed by Government and for the expenditure of these dues by Government through the Presidency Port Officer. There is no specific provision for any committee to administer these dues. It is customary to appoint committees to advise the Presidency Port Officer regarding the necessities of these ports, but these committees have no statutory powers.

" A Port Conservancy Board represents an advance on this stage but not a great one. The Indian Ports Act, 1908, provides for the appointment of a conservator of each port and there are certain sections under which power can be given to the conservator in regard to the employment of establishment, the carrying out of works, the provision of buoys, lights and other matters. The Act further admits of these powers being given to a body of persons. For want of a better law, therefore, the practice has grown up of appointing boards under this Act and giving them certain restricted powers in the larger of the minor ports.

" Port Trusts are confined to the major ports of Calcutta, Bombay, Madras, Rangoon, Chittagong and Karachi, and they have practically full powers.

" The present position in this Presidency is that we have a Port Trust only in Madras, Port Conservancy Boards at Cochin, Tuticorin and Cocanada ; and Landing and Shipping Fees Committees at nine minor ports. I think it will